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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Equal Access and Interconnection	)	CC Docket No. 94-54
Obligations Pertaining to	)	RM-8012
Commercial Mobile Radio Services	)	

COMMENTS OF AT&T

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SUMMARY

In the Notice, the Commission seeks information and comments on: (i) the equal access obligations to be imposed on commercial mobile radio services ("CMRS") providers; (ii) the rules governing interconnection agreements between LECs and CMRS providers, and between CMRS providers; and (iii) the resale obligations to be made applicable to providers of CMRS. The Commission has requested this information in furtherance of its statutory mandate to establish a consistent regulatory scheme for similar commercial radio services.

The benefits of equal access are well-established. Equal access provides customers with the ability to select the interexchange carriers of their choice and provides them with increased "buying power" that they can and do use in obtaining the types of interexchange services that they desire and need. Equal access also provides interexchange carriers the ability to compete on the basis of the quality and price of their services. Indeed, because the benefits of equal access are so significant, AT&T committed to provide equal access to customers of McCaw cellular systems at the time AT&T announced its intent to negotiate an alliance with McCaw.

The market for CMRS is beginning to expand rapidly. It is thus appropriate for all of the benefits of equal access now to be extended to customers of all CMRS providers. With a universal equal access obligation, all

customers of CMRS, and not merely a subset, will enjoy the benefits that equal access will confer, and no particular class of CMRS provider will be hobbled by disparate regulatory treatment.

The current system of privately negotiated agreements regarding interconnection between LECs and cellular carriers affords LECs flexibility to meet the needs of cellular providers, and appears to be working satisfactorily. This system should be extended to all CMRS providers. The Commission can facilitate its monitoring of such negotiations by requiring LECs to file all carrier-to-carrier interconnection agreements. Given the evolving nature of CMRS, the Commission should not promulgate specific rules for interconnection between CMRS providers. Rather, the Commission should adopt policies favoring interconnection among such providers and allow competition to determine how interconnection is best implemented.

Similarly, the Commission should allow competition to determine the particular areas within the CMRS market where resale will be effective, and in all events should adopt resale policies that do not artificially distinguish between CMRS providers.

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Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services	)	CC Docket No. 94-54 RM-8012

COMMENTS OF AT&T

AT&T Corp. ("AT&T") hereby submits its comments on the Notice of Proposed Rulemaking and Notice of Inquiry in CC Docket No. 94-54, released July 1, 1994.[1] With this Notice, the Commission continues its consideration of the appropriate regulatory structure for commercial mobile radio services ("CMRS"), pursuant to the Congressional mandate to establish a consistent, symmetrical regulatory scheme for similar commercial mobile radio services.[2]

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1 In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 94-54, FCC 94-145, released July 1, 1994 ("Notice").

2 See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b)(2)(A), (B), 107 Stat. 312, 392 (1993), to be codified at 47 U.S.C. §§ 303(n), 332.

INTRODUCTION

Congress created the CMRS classification to ensure that similar mobile services receive similar regulatory treatment. To implement this goal, in the CMRS Second Report, the Commission clarified which mobile services would be classified as CMRS, and which services would be classified as private mobile radio services ("PMRS").[3] More recently, the Commission completed its analysis of the nature of competition among CMRS providers to determine the services that should be considered substantially similar for purposes of applying comparable technical, operational, and regulatory rules.[4] The Commission has concluded "that virtually all CMRS services are actually or potentially competitive with each other to some degree, and that the range of services that are deemed substantially similar for purposes of establishing comparable technical requirements should therefore be defined broadly."[5]

In the Notice, the Commission seeks comment on three questions left open in the CMRS Second Report. First, the Commission considers whether equal access obligations

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[3] In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd. 1411 (1994) ("CMRS Second Report").

[4] FCC News, Report No. DC-2638, released August 9, 1994, p. 1 (announcing the adoption of the Third Report and Order in GN Docket No. 93-252).

[5] Id.

should be imposed on CMRS providers.[6] Next, the Commission considers rules to govern interconnection services provided by a local exchange carrier ("LEC") to a CMRS provider. Finally, the Commission inquires into the extent to which CMRS providers should be required to interconnect with each other, and whether the resale obligations that apply to cellular carriers should be extended to all CMRS providers.

I. EQUAL ACCESS REQUIREMENTS SHOULD BE IMPOSED UNIFORMLY ON ALL CMRS PROVIDERS.

AT&T has long supported the principle of customer choice as the superior means of serving the public interest and fostering competition in the telecommunications industry. Equal access ensures that customers have the widest possible range of options in selecting long distance carriers who depend on local distribution facilities (or in this case, mobile services) to make their services available, and thus permits interexchange carriers to compete more effectively on the basis of the quality and price of their services, rather than on the type of connections a local (or mobile) carrier chooses to provide.

For these reasons, equal access obligations were initially imposed primarily to enhance competition among

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[6] This issue was also raised in a petition for rulemaking filed by MCI Telecommunications Corporation ("MCI") on June 2, 1992 ("MCI Petition"), and the Commission has incorporated the record in that rulemaking proceeding (RM-8012) into this docket (see Notice, para. 1 n.2).

interexchange carriers, who were (and are) totally dependent on essential local exchange bottlenecks. The Modification of Final Judgment ("MFJ") and the GTE Final Judgment first imposed equal access obligations on the Bell Operating Companies ("BOCs") and the GTE Operating Companies.[7] The Commission thereafter adopted equal access requirements for all landline LECs in order to expand competition by affording all interexchange carriers equal access to their customers "on a reasonably uniform basis nationwide."[8] Moreover, BOC-controlled cellular carriers are required by the MFJ to provide their cellular customers with equal access to their preferred interexchange carriers.

The result has been explosive growth in the number of competing services and service providers available to customers and consistent improvement in the quality and ubiquity of service options. But an equally compelling result has been the dramatic increase in "buyer power" in the interexchange business: the ability of customers to

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[7] See United States v. Western Electric Co., 552 F. Supp. 131, 195-96 (1982), aff'd, 460 U.S. 1001 (1983); United States v. GTE Corp., 603 F. Supp. 730, 743 (1984).

[8] MTS and WATS Market Structure, Phase III, 94 F.C.C.2d 292, 296-97 (1983). As the Commission explained, "in a more fragmented and competitive telecommunications industry the interconnection 'ground rules' must be set at the outset, particularly inasmuch as interconnection often represents the sole means for competitive carriers (and providers of equipment and facilities) to access their customers." Id. at 298.

select the services and service providers that are most attractive, assemble "packages" of services that best meet their needs and, through their ability freely to change carriers, exert maximum competitive pressure on their suppliers to be even more efficient and innovative.

Indeed, these consumer benefits are so significant that it is no longer necessary or appropriate to consider them merely as a means to stimulate competition in certain markets or businesses. Instead, AT&T believes that these benefits should be available to as many customers as possible through regulation grounded in the public interest. It is for this reason that, when the intent to negotiate an alliance with McCaw Cellular Communications, Inc. ("McCaw") was first announced, AT&T simultaneously announced its unconditional commitment to provide equal access to customers of McCaw's cellular systems -- notwithstanding the lack of any regulatory or competitive compulsion to do so.[9]

As the number of CMRS customers and their use of CMRS grows, the use of mobile radio facilities to originate and terminate interstate and international calls will also

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[9] AT&T's commitment to equal access has since been memorialized in the consent decree it has entered with the Department of Justice, pursuant to which the Department has approved the AT&T/McCaw merger on antitrust grounds. See United States v. AT&T Corp. and McCaw Cellular Communications, Inc., C.A. No. 94-01555 (HHG), Complaint, Stipulation, and Final Judgment, filed July 15, 1994 ("McCaw Decree").

grow, and will continue to expand. It is thus critical that rules governing the equal access obligations of all CMRS providers be established now so that the new and potential CMRS providers can incorporate these requirements into their developing business plans, and all CMRS providers, both new and existing, can be certain that they are subject to the same regulatory requirements. This will ensure that no service provider is hobbled by disparate regulatory treatment -- consistent with the specific intent of Congress. Moreover, it is ecpecially timely to extend equal access rules to all CMRS providers now, to maximize the consumer benefits that flow from such a system.

Because there is no uniform equal access obligation today on CMRS providers, many long distance customers who use CMRS are denied the same range of competitive choice they now enjoy in selecting interexchange carriers from their landline local exchanges; likewise, interexchange carriers' opportunities to compete on the basis of innovative features and services offered to those customers are diminished. Moreover, because some CMRS providers do provide equal access and others do not, interexchange carriers and their customers are also denied the ability to plan and offer their services "on a reasonably uniform basis nationwide," contrary to the

Commission's policy,[10] and contrary to the intent of Congress.

In these circumstances, the Commission should act promptly to adopt uniform equal access obligations for all CMRS providers. Like landline customers, CMRS customers who use long distance services could enjoy all the benefits of choice, quality and price that the intensely competitive interexchange market offers, provided interexchange carriers are assured reasonable and nondiscriminatory access to those customers. The absence of equal access denies consumers the ability to access interexchange carriers of their own choosing, and thus may prevent them from realizing the full value of the interexchange services otherwise available to them in a competitive marketplace.[11]

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[10] MTS and WATS Market Structure, Phase III, 94 F.C.C.2d at 296-97. Indeed, even the BOC-affiliated cellular carriers do not uniformly implement equal access. For example, Cybertel refused to ballot its existing cellular customer base when it implemented equal access after being acquired by a BOC. See In the Matter of Cybertel Cellular Telephone Company Tariff F.C.C. No. 1, Trans. No. 1, DA 92-840, released June 23, 1992, para. 3. This Notice affords the Commission the ideal opportunity to ensure that uniform equal access requirements are established for and imposed on all providers of CMRS.

[11] For example, a customer of AT&T's Software Defined Network Service ("SDN") can meet its interexchange needs using SDN -- and benefit from the discounts and features available with SDN -- only when the customer uses the exchange access services of a landline carrier (or a CMRS provider) that provides access to AT&T.

The Commission's tentative conclusion that equal access obligations should only be imposed on cellular carriers (Notice, para. 35) is based on perceived competitive differences between cellular services and other CMRSs. The Notice recognizes (para. 43) that this perception is based on an incomplete record, and AT&T does not believe that this perception is correct. In fact, AT&T believes that all wireless services are or will soon become substitutable for one another and intensely competitive.[12] But in all events, regardless of the competitiveness of the various services, uniform equal access obligations for all CMRS providers should be required because the significant consumer benefits that are the proven result of such a system far outweigh any minimal incremental costs that would be incurred.

II. EQUAL ACCESS SHOULD BE IMPLEMENTED BY CMRS PROVIDERS SO AS TO MINIMIZE CUSTOMER CONFUSION AND TO MAXIMIZE COMPETITION.

The Notice asks a number of questions regarding the manner in which equal access should be implemented by

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[12] As the Commission itself observed (Notice, para. 45), for example, "the service characteristics and capabilities of wide-area SMR systems [like Nextel's] will make them competitors to cellular providers, in which case considerations of regulatory parity might weigh in favor of imposing similar regulatory obligations." See also p. 2, supra. (citing the Commission's conclusion "that virtually all CMRS services are actually or potentially competitive with each other to some degree").

CMRS providers. The success of equal access in the landline market, and the familiarity of customers and carriers with the processes employed to implement equal access there, strongly support the use of the landline equal access rules as a model for all CMRS providers.[13] Adopting consistent rules applicable to all CMRS providers would maximize the benefits to customers and competitors alike, and would be fully consistent with the statutory mandate to employ consistent regulation for similar services. In the event that a particular CMRS provider can demonstrate that application of these equal access rules in its particular circumstances would not be in the public interest, the Commission has the authority to waive the requirements of its rules upon an appropriate showing of good cause.[14]

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[13] In this regard, the Commission should require that CMRS providers offer 1+ access (Notice, para. 85) to the mobile service customer's chosen interexchange carrier, as well as the ability to reach other interexchange carriers by dialing their carrier access codes. Customers are familiar with this arrangement because of its application in landline services, thus facilitating customer acceptance and minimizing customer confusion. The tentative conclusion in the Notice (para. 92) that the Commission should impose presubscription and balloting requirements is also correct. These requirements, as described in paras. 88-89 of the Notice (including allocation of customers who do not presubscribe to an interexchange carrier), are currently applied in the landline market and should be applied equally to all CMRS providers.

[14] 47 C.F.R. § 1.3.

With respect to the timing of equal access implementation (Notice, para. 54), as with any introduction of a new capability in the network, some transition period will be required.[15] The Commission should, however, establish the date by which all existing systems must provide equal access, absent a waiver (for example, 18 months after the release of the Order concluding this proceeding), and should establish a requirement that new systems deployed after that date may not be placed in service until they can provide equal access.[16]

To define the scope of the equal access obligation, it is necessary to identify the relevant service area. As described in the Notice (paras. 57-61), CMRS providers today operate in a number of different service areas, and there is no consistent definition of what

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[15] In cellular systems, for example, it is essential that these CMRS providers deploy IS-41 capability in their networks to permit a mobile customer to use its presubscribed interexchange carrier even when the customer travels into another CMRS provider's service area. Without this capability, equal access for CMRS would be incomplete. IS-41 either has been implemented or is currently being deployed in many existing cellular networks. The Commission should require that this capability be made available by all CMRS providers as part of their equal access service.

[16] And as in the landline context, the Commission should establish a bona fide request from an interexchange carrier to a CMRS provider as the trigger mechanism for the equal access obligation (see Notice, para. 55; AT&T Comments, RM-8012, filed September 2, 1992, p. 6 ("AT&T Comments")).

constitutes a service area for CMRS that could be applied in the equal access context. Currently, BOC-controlled CMRS providers are required to provide equal access based on LATA boundaries, except where waivers have been granted.[17] In addition, LATA boundaries are used to define the equal access obligation in landline markets, and "LATAs are well known service areas, having been in existence for over ten years" (Notice, para. 66). As a result, each interexchange carrier's network has been built to ensure a presence in each LATA the interexchange carrier serves.

For these reasons, adopting LATAs (together with exceptions where they have been or may be granted) as the initial service areas for CMRS equal access will serve the public interest and will ensure consistent, symmetrical regulation. Again, the Commission always has the flexibility, upon a proper showing by a CMRS provider, to adopt a different service area definition for a particular provider or service if warranted by the circumstances.[18]

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[17] There have been many such waivers. Whereas LATAs were used in the landline context to define local communities of interest, it has often been the case that -- due to its mobile nature -- cellular has different and larger "communities of interest." The same flexible approach to community of interest would be appropriate for CMRS.

[18] Regarding the terms and conditions of interconnection for CMRS equal access (Notice, paras. 78-79), the Commission need not dictate specific terms of interconnection for CMRS providers, except to rule that they are required to provide interconnection to all interexchange carriers on a nondiscriminatory basis and to offer all such carriers access that is equal in terms of type, quality and price.

(footnote continued on following page)

III. CMRS INTERCONNECTION AND RESALE OBLIGATIONS.

Finally, the Notice (paras. 101-143) seeks comment on a number of issues regarding interconnection between LECs and CMRS providers, interconnection between CMRS providers, and resale of CMRS. First, the current process of private, good faith negotiations between cellular service providers and LECs, which result in agreements that govern the terms conditions and charges for interconection between LECs and cellular carriers appears, for the most part, to be working

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(footnote continued from previous page)

Although these carriers would be required to file tariffs for this equal access service under Section 203 of the Act, Congress has specifically authorized the Commission to forbear from applying the requirements of Section 203 to CMRS providers to avoid unnecessary regulation. The Commission has elsewhere determined that the CMRS market is sufficiently competitive to warrant forbearance from a tariff filing requirement for CMRS interstate access (Notice, para. 93, citing CMRS Second Report, 9 FCC Rcd. at 1478-80). Nonetheless, the Commission should require that CMRS providers file with the Commission informational tariffs for their equal access services for a period of at least one year. In this rapidly developing market where the access providers undeniably have a degree of market control, these informational filings would facilitate adequate monitoring of the compliance of CMRS providers with their statutory obligations not to unreasonably discriminate. They would also provide the Commission with sufficient experience and data to subsequently exercise the forebearance authority it has received from Congress if the experience in this market demonstrates that it would be appropriate. The Commission should also require that all CMRS providers offer "on reasonable and non-discriminatory terms and conditions, all information interexchange carriers need to bill their interexchange customers" (Notice, para. 99; see also AT&T Comments, pp. 5-6).

satisfactorily.[19] This process, for example, appears to afford LECs the flexibility to meet the diverse and evolving needs of CMRS providers. This practice should be applied to all CMRS providers and the Commission should require that LECs "file with the Commission all carrier-to-carrier interconnection agreements" as suggested in the Notice (para. 120). This will facilitate monitoring the compliance of these carriers with their nondiscriminatory interconnection obligations.

Second, CMRS provider interconnection with other CMRS providers would be in the public interest because it would facilitate the use and interaction of a variety of services by customers to make or receive communications. In addition, as the Notice observes (para. 126), such interconnection could eliminate the need for CMRS traffic to "pass through a LEC switch" to reach a subscriber of another CMRS provider, particularly where such routing would be inefficient or uneconomical. Given the developing nature of most CMRSs, however, the Commission should not promulgate specific rules for CMRS provider interconnection at this time. Rather, the Commission should adopt a policy favoring interconnection among CMRS providers and permit the

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[19] See, e.g. In the Matter of the Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 2 FCC Rcd. 2910, 2916 (1987), affirmed 4 FCC Rcd. 2369, 2370-71 (1989).

competitive market to determine how to best implement those interconnections.

Likewise, with respect to the resale obligations of CMRS providers, if there are particular areas within the CMRS market where resale could be effective, competitive market forces will assure that resale opportunities are made available. AT&T is skeptical of the link between the existence of resale and the stimulation of competition, and in the rapidly expanding CMRS market there will probably be enough direct competition that resale will be unnecessary and uneconomical. The critical need is for the Commission to adopt resale policies -- whatever they are -- that do not artificially distinguish among competing CMRS providers; thereby avoiding potentially favoring certain competitors over others.

CONCLUSION

For all these reasons, the Commission should adopt uniform equal access requirements applicable to all CMRS providers and take other steps, as described above, to maximize consumer benefit by stimulating competition for CMRS services.

Respectfully submitted,

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